

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|---------------------------|---|----------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | 4:01CR3048 |
| |) | |
| v. |) | |
| |) | |
| SCHUYLER TAFOYA, |) | MEMORANDUM AND ORDER |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the Court on defendant's notice of appeal (Filing No. 109). Defendant appeals the memorandum opinion (Filing No. 105) and order and judgment (Filing No. 106) dismissing defendant's § 2255 motion as "second or successive." The defendant also appeals the denial of his motion for reconsideration (Filing No. 107).

Also before the Court is a notice of untimely appeal (Filing No. 110). The Court has determined that said appeal was timely filed pursuant to Federal Rules of Appellate Procedure 4(C)(6)(c), and said memorandum will be stricken.

The Eighth Circuit Court of Appeals has directed that "[d]istrict courts should continue to certify pursuant to § 1915(a)(3) and [Fed. R. App. P.] 24(a) whether or not an appeal by any appellant who has moved in the district court to proceed in forma pauperis on appeal is or is not taken in good faith. If the district court concludes that such an appeal is not taken in good faith, it shall, pursuant to [Fed. R. App. P.] 24(a), 'state

in writing the reasons for the denial.'" *Henderson v. Norris*, 129 F.3d 481, 485 (8th Cir. 1997). Defendant's appeal is not taken in good faith, and the appeal is frivolous and without merit. Accordingly,

IT IS ORDERED:

1) A certificate of appealability will not issue. Pursuant to Fed. R. App. P. 24(a)(4), the Clerk of Court shall notify the parties and the Eighth Circuit that the defendant has been denied in forma pauperis status on appeal, and that his appeal has been determined not to be in good faith.

2) The clerk of court shall strike memorandum of untimely appeal (Filing No. 110).

DATED this 9th day of March, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court